

2 Am. Jur. 2d Administrative Law IX Refs.

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Administrative Law

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IX. Liability of Administrative Agencies

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#) 🔑 117

A.L.R. Library

A.L.R. Index, Administrative Law

A.L.R. Index, Public Officers and Employees

West's A.L.R. Digest, Administrative Law and Procedure 🔑 117

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2 Am. Jur. 2d Administrative Law § 560

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Administrative Law

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IX. Liability of Administrative Agencies

§ 560. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

Forms

Forms relating to damages against administrative officials or agency, generally, see Am. Jur. Pleading and Practice Forms, Administrative Law [\[Westlaw® Search Query\]](#)

The immunity of an administrative officer from personal liability depends upon the nature of the officer's duty.¹ Where public officials are acting within the scope of their duties and exercising a discretionary power, the courts are not warranted in interfering unless fraud or corruption is shown, or the power or discretion is being manifestly abused to the oppression of the citizen.² In other words, administrative agencies and their officers, when acting in relation to matters committed to their control or supervision, are generally immune from civil liability for the consequences of their acts.³

The general rule of immunity from civil liability has been applied to executive officers, as well as to judicial and quasi-judicial officials.⁴

Absent ambiguity, courts may not resort to rules of construction to broaden the scope and application of a statute by expanding an administrative agency's liability.⁵

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Footnotes

¹ [Barr v. Matteo](#), 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434 (1959).

² §§ 490, 491.

³ Industrial Commission v. Superior Court In and For Pima County, 5 Ariz. App. 100, 423 P.2d 375 (1967).

⁴ Cooper v. O'Connor, 99 F.2d 135, 118 A.L.R. 1440 (App. D.C. 1938).

⁵ Hosmer v. New York State Office Of Children And Family Services, 289 A.D.2d 1042, 735 N.Y.S.2d 289 (4th Dep't 2001).

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2 Am. Jur. 2d Administrative Law § 561

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Administrative Law

Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

IX. Liability of Administrative Agencies

§ 561. General rule as to discretionary, judicial, or quasi-judicial acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

Forms

Forms relating to statutory immunity: see Am. Jur. Pleading and Practice Forms, Administrative Law [[Westlaw® Search Query](#)]

The doctrine of judicial immunity from suit¹ has been extended to governmental officials with respect to their acts of a discretionary, judicial, or quasi-judicial nature.²

The general rule is that an administrative officer is not personally liable in a civil action for damages for an error or mistake in making a determination³ where the officer was acting within his or her jurisdiction,⁴ in the honest exercise of judgment, without bad faith, and without violating clearly established statutory or constitutional rights of which a reasonable person would be aware,⁵ in a judicial or quasi-judicial capacity,⁶ or in a capacity which was not merely ministerial, but one in which it was the officer's duty to exercise judgment and discretion.⁷

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Footnotes

¹ Am. Jur. 2d, Judges §§ 61 to 66.

² [Barr v. Matteo](#), 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434 (1959).
As to exception in the Federal Tort Claims Act exempting government from liability for any claim based on exercise or failure to exercise a discretionary function or duty on the part of a federal agency, see [Am. Jur. 2d, Federal Tort Claims Act §§ 34 to 36](#).

§ 561. General rule as to discretionary, judicial, or..., 2 Am. Jur. 2d...

- ³ Wright v. White, 166 Or. 136, 110 P.2d 948, 135 A.L.R. 1 (1941) (malicious prosecution action against military officers); Chireno Independent School Dist. v. Wedgeworth, 15 S.W.2d 679 (Tex. Civ. App. Beaumont 1929).
- ⁴ § 565.
- ⁵ § 566.
- ⁶ Robinette v. Price, 214 Minn. 521, 8 N.W.2d 800 (1943); Meinecke v. McFarland, 122 Mont. 515, 206 P.2d 1012 (1949); State ex rel. School Dist. of Scottsbluff v. Ellis, 163 Neb. 86, 77 N.W.2d 809 (1956).
- ⁷ Hardy v. Vial, 48 Cal. 2d 577, 311 P.2d 494, 66 A.L.R.2d 739 (1957); State ex rel. School Dist. of Scottsbluff v. Ellis, 163 Neb. 86, 77 N.W.2d 809 (1956).

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2 Am. Jur. 2d Administrative Law § 562

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Administrative Law

Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

IX. Liability of Administrative Agencies

§ 562. General rule as to discretionary, judicial, or quasi-judicial acts—What constitutes judicial or quasi-judicial functions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#) 🔑 117

Administrative enforcement agencies often perform multiple functions, some but not all of which are quasi-judicial. Conducting hearings on the prosecution of violations resembles the inherently discretionary roles of judge and prosecutor,¹ and state administrative proceedings are sufficiently comparable to judicial proceedings to warrant the extension of immunity to an administrative hearing officer engaging in a function that is quasi-judicial in nature.² For example, a workers' compensation board, in making compensation awards, acts as a quasi-judicial body of limited jurisdiction, and members of the board are entitled to immunity.³ A person acting as an administrative hearing officer in making and certifying a hearing record is engaged in a discretionary quasi-judicial function and is entitled to immunity even though the officer may have erred in including documents in the record when they were not formally entered into evidence at the hearing as long as he or she did not act in the clear absence of all authority.⁴ In contrast, performing a nondiscretionary ministerial task, such as a factual analysis of comparable rents, is more analogous to the function of a subordinate clerk in the executive branch and is not entitled to immunity.⁵

Whether an agency is immune from liability for its rulemaking decisions also depends on whether the agency is exercising discretion.⁶

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Footnotes

¹ [Broadway & 67th St. Corp. v. City of New York](#), 116 Misc. 2d 217, 455 N.Y.S.2d 347 (Sup 1982), order rev'd on other grounds, 100 A.D.2d 478, 475 N.Y.S.2d 1 (1st Dep't 1984).

² [Loran v. Iszler](#), 373 N.W.2d 870 (N.D. 1985).

³ [Industrial Commission v. Superior Court In and For Pima County](#), 5 Ariz. App. 100, 423 P.2d 375 (1967). As to workers' compensation boards' powers and functions, generally, see [Am. Jur. 2d, Workers' Compensation](#) §§ 48, 50.

⁴ [Loran v. Iszler, 373 N.W.2d 870 \(N.D. 1985\).](#)

⁵ [Broadway & 67th St. Corp. v. City of New York, 116 Misc. 2d 217, 455 N.Y.S.2d 347 \(Sup 1982\), order rev'd on other grounds, 100 A.D.2d 478, 475 N.Y.S.2d 1 \(1st Dep't 1984\).](#)

⁶ [Pendergrass v. State, 74 Or. App. 209, 702 P.2d 444 \(1985\).](#)

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2 Am. Jur. 2d Administrative Law § 563

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law

Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

IX. Liability of Administrative Agencies

§ 563. Absolute or qualified immunity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

A.L.R. Library

[Immunity of federal tax agent from suit based upon agent's effort to enforce or collect tax, 99 A.L.R. Fed. 700](#)

[Liability of Federal Government or government officials for action taken under Federal Witness Protection Program \(18 U.S.C.A. secs. 3521-3528 Supp IV 1986\), 98 A.L.R. Fed. 545](#)

Trial Strategy

[Proof of Qualified Immunity Defense in 42 U.S.C.A. § 1983 or Bivens Actions Against Law Enforcement Officers, 59 Am. Jur. Proof of Facts 3d 291](#)

Absolute immunity is the right to be free, not only from the consequences of a suit's results but also from the burden of defending oneself altogether.¹In contrast, qualified immunity only shields an administrative officer from liability if the officer's activities are within the scope of his or her office, are in objective good faith,²and do not violate clearly established statutory or constitutional rights of which a reasonable person would be aware.³The general rule of qualified immunity is intended to provide government officials with the ability to reasonably anticipate when their conduct may give rise to liability for damages and to protect officials from broad-ranging pretrial discovery, which can be peculiarly disruptive of effective government.⁴Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law and whether an official protected by qualified immunity may be held personally liable generally turns on the objective legal reasonableness of the allegedly unlawful action, assessed in the light of the legal rules that were clearly established at the time it was taken.⁵

Qualified immunity represents the norm⁶ although there are exceptional circumstances where it may be demonstrated that absolute immunity is essential for the conduct of public business.⁷ Absolute privilege extends to administrative bodies in the exercise of quasi-judicial powers which they are required by statute to exercise.⁸ For example, judges, prosecutors, and hearing officers who act in a quasi-judicial role have absolute immunity because they must be free to exercise their judgment impartially⁹ and to perform their respective functions without harassment or intimidation.¹⁰ Administrative law judges exercise independent judgment in performing adjudicatory functions and because of their functional similarities to federal and state trial and appellate judges, administrative law judges, and judicial review officers are entitled to absolute immunity from suit for their judicial acts.¹¹ A federal agency attorney who arranges for the presentation of evidence on the record in the course of an adjudication is absolutely immune from suits based on the introduction of such evidence.¹²

Practice Tip:

Qualified, or good-faith, immunity is an affirmative defense that must be pleaded by a defendant government official in a suit for civil damages based upon his or her official acts.¹³

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Footnotes

- ¹ Am. Jur. 2d, Public Officers and Employees § 307.
- ² Am. Jur. 2d, Public Officers and Employees § 314.
- ³ Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).
- ⁴ Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).
- ⁵ Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).
- ⁶ Cleavinger v. Saxner, 474 U.S. 193, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985); Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).
- ⁷ Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978).
- ⁸ Belcher v. Kentucky Parole Bd., 917 S.W.2d 584 (Ky. Ct. App. 1996).
- ⁹ Broadway & 67th St. Corp. v. City of New York, 116 Misc. 2d 217, 455 N.Y.S.2d 347 (Sup 1982), order rev'd on other grounds, 100 A.D.2d 478, 475 N.Y.S.2d 1 (1st Dep't 1984).
- ¹⁰ Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978).
- ¹¹ Daul v. Meckus, 897 F. Supp. 606 (D.D.C. 1995), aff'd, 107 F.3d 922 (D.C. Cir. 1996).
- ¹² Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978).
- ¹³ Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

Works.

2 Am. Jur. 2d Administrative Law § 564

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law

Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

IX. Liability of Administrative Agencies

§ 564. Absolute or qualified immunity—Application to constitutional violations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

Trial Strategy

[Proof of Qualified Immunity Defense in 42 U.S.C.A. § 1983 or Bivens Actions Against Law Enforcement Officers, 59 Am. Jur. Proof of Facts 3d 291](#)

Under the principle of qualified immunity for constitutional violations, federal officials are not liable for mere mistakes in judgment, whether the mistake is one of fact or law.¹ In the absence of a congressional direction to the contrary, federal officials are not accorded a higher degree of immunity from liability when sued for a constitutional violation than state officials are accorded when sued for an identical violation under [42 U.S.C.A. § 1983](#).² Consequently, federal officials who seek absolute exemption from personal liability for unconstitutional conduct bear the burden of showing that public policy requires an exemption of such scope.³

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Footnotes

¹ [Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 \(1978\).](#)

² [Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 \(1978\).](#)

³ [Cleavinger v. Saxner, 474 U.S. 193, 106 S. Ct. 496, 88 L. Ed. 2d 507 \(1985\).](#)

2 Am. Jur. 2d Administrative Law § 565

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law

Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

IX. Liability of Administrative Agencies

§ 565. Jurisdictional questions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

The general rule of immunity of administrative officers requires the officer to act within his or her jurisdiction in order to protect the officer from liability,¹ and when a public officer goes outside the scope of his or her authority or duty, the officer is not entitled to protection because of his or her office but is liable for his or her acts the same as any private individual.² Accordingly, although an administrative hearing officer is immune from suit for damages for discretionary acts not done in the clear absence of all jurisdiction,³ an officer is liable for errors or mistakes when acting wholly without jurisdiction.⁴

It is not necessary for acts to be prescribed by statute for them to be done within an officer's scope of authority.⁵ It is sufficient if the acts are done in relation to matters committed by law to the control or supervision of the officer,⁶ or if they are more or less connected to the general matters committed by law to his or her control or supervision, or if they are governed by a lawful requirement of the department under whose authority the officer is acting.⁷

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Footnotes

¹ [Spalding v. Vilas](#), 161 U.S. 483, 16 S. Ct. 631, 40 L. Ed. 780 (1896).

² [Town of Randolph v. Ketchum](#), 117 Vt. 468, 94 A.2d 410 (1953).

³ [Loran v. Iszler](#), 373 N.W.2d 870 (N.D. 1985).

⁴ [Cooper v. O'Connor](#), 99 F.2d 135, 118 A.L.R. 1440 (App. D.C. 1938); [Logan City v. Allen](#), 86 Utah 375, 44 P.2d 1085 (1935).

⁵ [Cooper v. O'Connor](#), 99 F.2d 135, 118 A.L.R. 1440 (App. D.C. 1938).

⁶ [Hardy v. Vial](#), 48 Cal. 2d 577, 311 P.2d 494, 66 A.L.R.2d 739 (1957).

⁷ [Spalding v. Vilas, 161 U.S. 483, 16 S. Ct. 631, 40 L. Ed. 780 \(1896\).](#)

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2 Am. Jur. 2d Administrative Law § 566

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Administrative Law

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IX. Liability of Administrative Agencies

§ 566. Effect of administrative officer's unreasonable conduct or malice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Administrative Law and Procedure](#)  117

A.L.R. Library

[Civil liability of school officials for malicious prosecution, 66 A.L.R.2d 749](#)

[Civil liability of law enforcement officers for malicious prosecution, 28 A.L.R.2d 646](#)

Forms

Forms relating to liability of officers and agency, generally, see Am. Jur. Pleading and Practice Forms, Administrative Law [[Westlaw® Search Query](#)]

Public officials are immune from personal liability for their allegedly unlawful official actions unless the law clearly proscribes the actions they took.¹In addition, the contours of the right that the official allegedly violated must be sufficiently clear that a reasonable official would understand that what he or she is doing violates that right.²If the law at the time of the action was not clearly established, an official cannot reasonably be expected to anticipate subsequent legal developments, nor can the official fairly be said to know that the law forbade conduct not previously identified as illegal.³This does not mean, however, that the very action in question must have previously been held unlawful; it means that the unlawfulness of the contested action must be apparent in the light of preexisting law.⁴If the law is clearly established at the time of the action, the immunity defense should generally fail as a reasonably competent administrative officer should know the law governing his or her conduct.⁵The defense should be sustained, however, if the officer claims extraordinary circumstances and can prove that he or she neither knew nor should have known of the relevant legal standard.⁶

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Footnotes

- ¹ Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).
- ² Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).
- ³ Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).
- ⁴ Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).
- ⁵ Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).
- ⁶ Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

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